

AG Contract No. KR02-1965TRN
ECS JPA File No. 02-108
Project: STP-095-C (5)
TRACS No : 095 LA143 H5118 01C
Item Number: 12705
Section: SR 95 & Bluewater Dr.
Traffic Signal Drainage, widening
At MP 145.36

AGREEMENT

AMONG
THE STATE OF ARIZONA
AND
THE DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS
AND
COLORADO RIVER INDIAN TRIBES

THIS AGREEMENT is entered into the 14th of January 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS, acting by and through its Contracting Office (the "BIA") and the NATION of the COLORADO RIVER INDIAN TRIBES (the "Tribes") acting by and through its TRIBAL COUNCIL.

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Tribal Council of the Tribes is authorized to enter into this Agreement pursuant to Article VI, Section 1(a) of the Tribes' Constitution and Bylaws. The undersigned have been authorized to execute this Agreement on behalf of the Tribes.
3. The BIA is empowered by Title 23 U.S.C., Section 204 (B), (C), (D), and Section 308 (A) to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the BIA.
4. Congress has authorized appropriations for, but not limited to, the design and construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
5. The State, BIA and Tribes agree to participate in the design and construction of a new warranted traffic signal, drainage improvements and roadway widening at the Bluewater Drive Intersection MP 145.36 on SR 95, estimated cost at \$173,591.00 hereinafter referred to as the "Project". The parties hereto agree that the Project will be funded using Federal Aid Funds estimated at \$164,230.00 and the BIA will provide the matching 5.7% funds estimated amount of \$9,361.00. The Tribes will provide electrical power for the traffic signal, and maintain all elements outside of the State's right-of-way. The State will design and construct the Project and provide maintenance for the traffic signal at its own expense.

NO. 27323
Filed with the Secretary of State
Date Filed: 01/14/05
Janice K. Brewer
Secretary of State
By: Vinny J. Greenwald

6. The parties hereto agree and acknowledge to the following conditions: a) The estimated amounts referenced in this Agreement are subject to change and can change substantially; b) All parties will perform their responsibilities consistent with the Agreement and; c) Any change or modification to the Project will only occur with the mutual Agreement of the BIA, the Tribes and the State.

7. The interest of the State in the Project is in the acquisition of federal funds for the use and benefit of the Tribes by reason of federal law and regulations under which funds are authorized for and be expended for the Project.

Construction TRACS No. H5118 01C
 Estimated Federal Aid Funds @ 94.3%
 Estimated BIA Funds @ 5.7%

\$164,230.00
\$ 9,361.00

Estimated Total Cost of the Project

\$ 173,591.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State Will:

a. Upon execution of this Agreement, invoice the BIA for the estimated amount of \$9,361.00 for the traffic signal, drainage improvements, and roadway widening including construction engineering and administration costs.

b. Obtain encroachment permits from the BIA, necessary for the construction of the traffic signal.

c. Prepare design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve the Tribes' review comments.

d. Call for bids and award one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). Confer with the Tribes on any Project related contract modifications. Be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason attributable to the State.

e. Upon completion of the Project, provide the BIA with a final accounting of estimated costs, along with an invoice or reimbursement, for the difference between the estimated amount paid by the BIA and the actual costs for the Project.

f. Upon completion of the Project, provide maintenance to the traffic signal equipment all at the State's expense.

2. The BIA Will:

a. Review the design documents and provides comments.

b. Upon execution of this Agreement and after receipt of an invoice from the State, remit \$9,361.00 no later than March 2005 for the estimated costs of the Project.

c. Be responsible for the estimated costs associated with the traffic signal, drainage improvements and roadway widening and any increases over the estimated cost of the Project. Be responsible for any contractor claims for extra compensation due to delays or whatever reason, attributable to the Tribes and BIA.

3. The Tribes Will:

- a. Review the design documents and provide comments.
- b. After completion and acceptance of the Project, provide electrical energy to operate the signal, all at Tribes' expense.
- c. Grant the State right-of-entry access outside the State right-of-way as required to perform maintenance of the traffic signal equipment.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion and reimbursements; provided herein. However, the Tribe shall provide any provisions for maintenance for elements outside of the State's right-of-way and electrical power, perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to either party. The State shall not and will not be responsible for said maintenance outside of State's right-of-way, in the event the Tribe fails to budget for or provide maintenance of said elements of the Project referenced in Recital 5 and Article 3 b.

2. It is understood and agreed to by the parties herein, should the BIA or the Tribes cancel this Agreement as above written, the BIA will be responsible for all costs incurred by the State for the Project up to the time of cancellation.

3. In the event there are changes in the scope of the work, extra work, or changes in the planned work covered by this Agreement, a modification to this Agreement in the form of the Construction Change Order issued by the State's Resident Engineer, signed by representatives of the parties hereto is required prior to the start of work on said changes or additions.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. Applicable laws and regulations of the State, the Tribes and the Federal Government shall govern the rights of the parties with respect to the performance of this Agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this Agreement, compliant with applicable laws and regulations of the State, the Tribal and the Federal government, and acceptable to the State, the Tribal and the Federal government. Such process shall include a provision for arbitration.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

Colorado River Indian Tribes
Chairman
Route 1 Box 23-B
Parker, AZ 85344

The Department of Interior,
Bureau of Indian Affairs
Vernon Palmer
P O. Box 10
Phoenix, AZ 85007

10. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

11. Nothing in this Agreement shall be construed to effect or be deemed a waiver of immunity by any party unless specifically provided for herein.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**THE DEPARTMENT OF INTERIOR,
BUREAU OF INDIAN AFFAIRS**

STATE OF ARIZONA
Department of Transportation

By Wayne Nordwell
REGIONAL DIRECTOR
WESTERN REGIONAL OFFICE

By Douglas A. Forstie
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operation

COLORADO RIVER INDIAN TRIBES

By Daniel Eddy Jr.
DANIEL EDDY JR.
Tribal Chairman

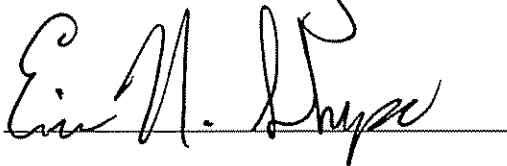
ATTEST

By Sylvia Homer
SYLVIA HOMER
Tribal Secretary

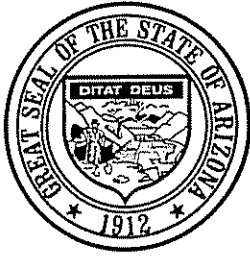
ATTORNEY APPROVAL FORM
FOR THE COLORADO RIVER INDIAN TRIBES

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the COLORADO RIVER INDIAN TRIBES, which has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declare this agreement to be in proper form and within the powers and the authority of the Tribal Council of the Colorado River Indian Tribes, granted to it under Article VI, Section 1, lit. a of the Constitution and Bylaws of the Colorado River Indian Tribes. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 6th day of August, 2004.



Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646


**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR02-1965TRN (**JPA 02-108**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED January 10, 2005.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General